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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
U.S. DISTRICT COURT SDNY

DELTA AIR LINES, INC.,)

Plaintiff,)

v.)

BOMBARDIER INC.,)

Defendant.)

Case No. _____

20 CV 3025

COMPLAINT

JUDGE WOODS

Delta Air Lines, Inc. ("Delta") files this Complaint against Bombardier inc. ("Bombardier"), showing the Court as follows:

INTRODUCTION

1. This is an action for breach of contract and a declaratory judgment related to Plaintiff Delta Air Lines, Inc.'s ("Delta") purchase of "C-Series" aircraft from Defendant Bombardier Inc. ("Bombardier"). Bombardier has breached its contractual obligations by refusing to honor [REDACTED] to Delta in connection with the delivery of C-Series aircraft. Bombardier has also repudiated its obligations under a related assignment agreement and guaranty executed in connection with Bombardier's assignment of its contractual obligations to an affiliate of Bombardier. Bombardier's past and continuing breaches have already caused Delta to suffer [REDACTED] in damages and are likely to cause even more damages going forward.

2. The origins of this dispute date back to 2008, when Bombardier launched the C-Series with the goal of developing a long-range, single-aisle aircraft to compete with jets sold by global aerospace giants The Boeing Company and Airbus SA. At the time, Bombardier was a

successful manufacturer of regional aircraft, but had never manufactured aircraft with more than 100 seats. In developing the C-Series from scratch, Bombardier made a “bet the company” decision to enter a new and intensely competitive market, where it would take on much larger and better-financed competitors.

3. From a technical perspective, the C-Series was a success. Potential customers lauded the aircraft’s state-of-the-art features, such as its use of composite materials to reduce cabin noise and improve fuel efficiency. In 2016, as part of its effort to modernize its narrow-body fleet, Delta placed an order for up to 125 of the C-Series aircraft. Bombardier stated that Delta’s order, which was worth more than \$5 billion based on the list price of the aircraft, was a “watershed moment” for the C-Series program.

4. From a financial perspective, however, and notwithstanding Delta’s order, the C-Series was a failure for Bombardier. Bombardier’s development of the C-Series was beset by delays and cost overruns, causing Bombardier to incur billions in debt before finally bringing the aircraft to market. Bombardier’s debt burden was so overwhelming that it sought and received government assistance in the form of a \$1 billion investment by the government of Quebec, where Bombardier is based. But even that injection of cash proved insufficient to rescue Bombardier. By early 2020, Bombardier had no choice but to sell some of its most valuable assets to raise cash and reduce debt. As of March 2020, Bombardier has manifested its intent to exit the commercial aircraft business and transform itself into a much smaller company that now focuses on manufacturing private business jets.

5. As part of its survival strategy, however, Bombardier has wrongfully sought to repudiate some of the fundamental promises it made to secure Delta’s order for the C-Series. In particular, as an inducement for Delta to buy the C-Series, Bombardier agreed to [REDACTED]

[REDACTED]

6. Bombardier's pretext for [REDACTED] relies on a strained interpretation of the parties' agreements. In reality, Bombardier has [REDACTED] merely because it has decided to exit the commercial jet business, including but not limited to the C-Series program, and would now like to avoid the significant cost of the promises it made to Delta when entering into the purchase agreement. Per the plain terms of the parties' agreements, however, Bombardier has no right to do so. Delta has therefore brought this action to preserve the benefit of the bargain it struck when it agreed to purchase C-Series aircraft from Bombardier.

PARTIES, JURISDICTION, AND VENUE

7. Delta is a corporation organized and existing under the laws of the State of Delaware. Delta maintains its corporate headquarters in Atlanta, Georgia.

8. Bombardier is a Canadian corporation based in Montreal, Quebec. Bombardier regularly transacts business in the United States and, in particular, New York City. Bombardier has consented to the jurisdiction of this Court for purposes of the contracts at issue in this case, which are described further below.

9. This Court has subject-matter jurisdiction over this action based on diversity of citizenship as defined by 28 U.S.C. §1332. The amount in controversy in this action, exclusive of interest and costs, exceeds \$75,000.

10. Venue is proper in this Court because Bombardier has consented to personal jurisdiction and venue in this forum under Article 21.1 of the Purchase Agreement between Bombardier and Delta, as defined below.

FACTUAL BACKGROUND

A. Delta's Business Relationship with Bombardier

11. Delta is one of the world's largest commercial airlines. For decades, Delta has operated thousands of flights daily across an extensive domestic and international network.

12. For much of its history, Bombardier has been a diversified manufacturing concern that, among other things, was in the business of manufacturing and servicing commercial aircraft. Bombardier manufactured and serviced regional aircraft such as its model CRJ-200, CRJ-700, and CRJ-900 aircraft.

13. Delta and Bombardier are parties to several agreements under which Delta has purchased CRJ-200, CRJ-700, and CRJ-900 aircraft from Bombardier. Delta, through its wholly-owned subsidiary Endeavor Air ("Endeavor"), operates CRJ-200, CRJ-700, and CRJ-900 aircraft within the Delta network.

14. Bombardier has also been in the business of selling goods and services relating to its CRJ-series regional jets. Delta regularly purchases goods and services from Bombardier for the purpose of maintaining Delta's fleet of CRJ-series regional aircraft.

15. In or around 2008, Bombardier developed a new aircraft it called the C-Series. Through the C-Series, Bombardier hoped to enter the intensely competitive market for single-aisle "mainline" aircraft, which has traditionally been dominated by multi-national aerospace corporations like Boeing and Airbus. Bombardier incurred billions in debt to finance development of the C-Series and to bring that aircraft to market.

B. Delta and Bombardier Enter into the Purchase Agreement

16. In April 2016, Delta announced its decision to order up to 125 C-Series aircraft from Bombardier.

17. According to a Bombardier press release, Delta's order for C-Series aircraft was the largest in Bombardier Commercial Aircraft history and made Delta the C-Series aircraft's largest customer. Bombardier stated publicly that, based on the list price of the aircraft, Delta's order had a value exceeding \$5 billion. Bombardier's President of Commercial Aircraft described Delta's order as a "watershed moment" for the C-Series program.

18. On April 27, 2016, Bombardier and Delta entered into a Purchase Agreement governing Delta's order for C-Series aircraft (the "Purchase Agreement"). Per the Purchase Agreement, Delta placed a "firm order" for 75 aircraft with an option to purchase up to 50 additional aircraft.

19. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

20. The opportunity to obtain [REDACTED]

[REDACTED] was of great value to Delta. Delta [REDACTED]

[REDACTED]

C. [REDACTED]

21. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

22. [REDACTED]
[REDACTED]
[REDACTED]

23. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

24. [REDACTED]
[REDACTED]

25. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

26. [REDACTED]
[REDACTED]

[REDACTED]

27. [REDACTED]

[REDACTED]

28. [REDACTED]

[REDACTED]

D. Bombardier Assigns its Rights and Obligations Under the Purchase Agreement

29. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

30. In June 2016, the government of Quebec reached a deal with Bombardier to make a \$1 billion investment in the C-Series program. As part of that investment, Bombardier and the government of Quebec formed a new partnership, called the C-Series Aircraft Limited Partnership, or “CSALP,” to take over the C-Series program.

31. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

32. On August 26, 2016, Bombardier formally assigned all of its rights, title, and interests under the Purchase Agreement to CSALP. At the time, Bombardier owned approximately 62% of CSALP and the Government of Quebec owned 38% of CSALP.

33. Bombardier's assignment to CSALP was memorialized in the August 26, 2016 Assignment and Assumption Agreement (the "Assignment Agreement") to which Bombardier, CSALP, and Delta are parties. The Assignment Agreement was signed by authorized representatives of CSALP, Bombardier, and Delta.

34. Under the Assignment Agreement, CSALP expressly assumed and agreed to perform, discharge, and fulfill all of Bombardier's responsibilities, liabilities, and obligations under and in connection with the Purchase Agreement and all Ancillary Agreements, including the Letter Agreements.

35. The Assignment Agreement provides that Bombardier's assignment to CSALP will not subject Delta to any liability to which it would not otherwise be subject under the Purchase Agreement or any Ancillary Agreement, including the Letter Agreements. Nothing in the Assignment Agreement modifies any of Delta's rights under the Purchase Agreement.

36. Through the Assignment Agreement, Bombardier indemnified Delta against any and all claims, demands, causes of action, liabilities, judgments, losses, damages, costs, and expenses of any kind whatsoever resulting from or arising out of any increase to or adverse change in the cost, risk, obligations, liabilities, or responsibility of Delta under the Purchase Agreement as a result of the assignment to CSALP.

37. Bombardier covenanted in the Assignment Agreement that its indemnification obligations to Delta would apply should there be any increase to or adverse change in the cost,

risk, obligations, liabilities, or responsibility of Delta under the Purchase Agreement as a result of Bombardier's assignment to CSALP.

38. In connection with Bombardier's assignment to CSALP, Bombardier also signed a Guaranty dated August 26, 2016. The Guaranty identifies Bombardier as the "Guarantor" and Delta as the "Guaranteed Party."

39. The Guaranty is signed by authorized representatives of Bombardier and Delta.

40. Under the Guaranty, Bombardier unconditionally and irrevocably guarantees CSALP's performance of all obligations under the Purchase Agreement, including full and prompt payment to Delta of all amounts due and payable by CSALP under the Purchase Agreement.

41. The Guaranty describes Bombardier's obligations as guarantor as irrevocable, absolute, independent, and unconditional.

E. Bombardier Sells a Majority Stake in CSALP to Airbus

42. Bombardier continued to suffer financial losses on the C-Series program even after its assignment to CSALP. Bombardier eventually decided to sell a majority stake in CSALP to Airbus.

43. As reported in a January 16, 2020 article in the *Wall Street Journal*, "Bombardier agreed to give control of its C-Series jets to Airbus in 2017 for no money upfront to rescue it. The new jet series had financially crippled the Montreal company after years of delays and billions of dollars of investment."

44. In or around October 2017, Airbus and Bombardier entered into an investment agreement under which Airbus acquired a 50.01% interest in CSALP. Bombardier retained ownership of approximately 31% of CSALP. In an October 2017 press release, Airbus disclosed that "[a]t closing, there will be no cash contribution by any of the partners, nor will CSALP assume any financial debt." According to the same Airbus press release, the investment agreement

between Airbus and Bombardier “contemplates that Bombardier will continue with its current funding plan of CSALP and will fund, if required, the cash shortfalls of CSALP during the first year following the closing up to a maximum amount of US\$350 million, and during the second and third years following the closing up to a maximum aggregate amount of US\$350 million over both years ...”

45. Following its acquisition of CSALP, Airbus renamed the C-Series the A-220.

F. CSALP and Delta Amend LA-07

46. On December 31, 2018, CSALP and Delta amended and restated LA-07 (the “LA-07 First Amendment”). The purpose of the LA-07 First Amendment was to document an agreement between Delta and CSALP concerning [REDACTED]

[REDACTED]

47. CSALP is a party to the LA-07 First Amendment in its capacity as the assignee of Bombardier’s rights and duties under the Purchase Agreement.

48. The LA-07 First Amendment refers to Delta as the “Buyer.” CSALP, in its capacity “as assignee of Bombardier Inc.,” is referred to as the “Seller” as a result of Bombardier’s assignment to CSALP.

49. [REDACTED]

[REDACTED]

50. Other than replacing references to “Bombardier” with references to the “Seller,” Section 3.4 of the LA-07 First Amendment is identical to Section 3.4 of LA-07, as it was originally executed.

51. In May 2019, Airbus changed CSALP’s name to the Airbus Canada Limited Partnership (“Airbus Canada”).

52. On June 3, 2019, Airbus Canada and Delta entered into a second Amended and Restated LA-07 (“LA-07 Second Amendment”). The purpose of the LA-07 Second Amendment was to document additional agreements between Delta and Airbus Canada concerning “Conversion Aircraft.”

53. The LA-07 Second Amendment refers to the Airbus Canada as the “Seller.”

54. Airbus Canada is a party to the LA-07 Second Amendment in its capacity as assignee of Bombardier’s rights and duties under the Purchase Agreement. Airbus Canada entered into the LA-07 Second Amendment as a result of Bombardier’s assignment to CSALP and CSALP’s name change to Airbus Canada.

55. [REDACTED]

[REDACTED]

56. Other than replacing references to “Bombardier” with references to the “Seller,” Section 3.4 of the LA-07 Second Amendment is identical to Section 3.4 of LA-07, as it was originally executed.

57. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

58. LA-01 has never been restated or amended and continues to provide that [REDACTED]

[REDACTED]

[REDACTED]

59. Article 19 of the Purchase Agreement, [REDACTED] has never been amended.

G. Airbus Canada Delivers Aircraft and [REDACTED]

60. Through the date of this Complaint, Airbus Canada has delivered more than twenty A-220 aircraft to Delta pursuant to the Purchase Agreement.

61. All of the A-220 aircraft delivered to Delta as of the date of this Complaint have been 100-series "Firm Aircraft" under LA-01.

62. None of the A-220 aircraft delivered to Delta as of the date of this Complaint have been 300-series "Conversion Aircraft."

63. [REDACTED]
[REDACTED]
[REDACTED]

64. [REDACTED]
[REDACTED]
[REDACTED]

65. [REDACTED]
[REDACTED]

66. As of the date of this Complaint, Airbus Canada [REDACTED]

[REDACTED] aggregate face value exceeding [REDACTED]

67. Delta anticipates that Airbus Canada will make additional deliveries of A-220 aircraft to Delta in the future. [REDACTED]
[REDACTED]

H. Bombardier Refuses to Accept the [REDACTED]

68. In June 2019, through its wholly owned subsidiary Endeavor Air, Delta placed orders with Bombardier for CRJ-related goods and services.¹ [REDACTED]

69. [REDACTED] Bombardier insisted that Delta pay cash for the CRJ-related goods and services that Delta had ordered.

70. [REDACTED], Bombardier placed Delta on credit watch. Bombardier refused to deliver any further goods or services to Delta unless and until Delta made payment in full and in cash.

71. Delta disagreed with Bombardier's refusal [REDACTED]. Delta, however, had an urgent operational need for the goods and services it had ordered from Bombardier because those goods and services were necessary to maintain Delta's fleet of CRJ regional aircraft. Delta paid Bombardier in cash to remove itself from Bombardier's credit watch and to resume Bombardier's provision of goods and services which Delta (through Endeavor) had ordered directly from Bombardier.

I. Bombardier Exits Airbus Canada and Sells Assets to Raise Cash

72. On January 16, 2020, the *Wall Street Journal* reported that Bombardier "said it may exit" its partnership with Airbus "because rising production costs threaten future returns on its investment." According to the article, "Bombardier said the need for additional cash to finance production of the commercial jets . . . may undermine any prospect of future profits, potentially forcing Bombardier to write down the value of the Airbus venture."

¹ [REDACTED]

73. On February 7, 2020, the *Wall Street Journal* reported that Airbus was in “advanced talks to acquire Bombardier Inc.’s remaining stake in a commercial jet family that the Canadian company once said would transform it into a major global aviation player.” According to the *Journal*’s report, Bombardier “has been scrambling to reduce roughly \$9 billion of long-term debt,” and was in talks to sell off some of its core assets, including Bombardier’s remaining stake in Airbus Canada.

74. In February 2020, Bombardier sold its stake in Airbus Canada to Airbus for approximately \$591 million. As reported by *Forbes* on February 13, 2020, “[t]he deal marks Bombardier’s exit from commercial aviation, with more divestitures expected as the Canadian manufacturer tries to reduce its crushing debt load of \$9.7 billion.”

75. Prior to exiting the Airbus Canada partnership, Bombardier announced that it had entered into a definitive agreement to sell its regional jet program to Mitsubishi. Under that deal, which is scheduled to close in mid-2020, Mitsubishi will acquire the maintenance, support, refurbishment, marketing, and sales activities for CRJ-series aircraft.

76. Bombardier’s pending sale of its regional jet business to Mitsubishi will, if consummated, qualify as a sale of a material portion of Bombardier’s assets. Following that sale, Bombardier will no longer be in the business of selling goods and services for CRJ-series aircraft or, at a minimum, Bombardier’s offerings of such goods and services will be significantly diminished.

77. Prior to entering into an agreement to purchase Bombardier’s regional jet business, Mitsubishi was in the business of manufacturing airframes.

78. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

J. Bombardier Refuses Delta's Demand

79. In a February 3, 2020 letter from its legal counsel, Delta gave notice that Bombardier was in breach of the Purchase Agreement and Assignment Agreement due to its refusal [REDACTED] (the "Demand Letter").

80. In the Demand Letter, Delta further gave notice that Bombardier had breached its obligations under the Guaranty.

81. In the Demand Letter, Delta demanded that Bombardier cure its breaches by [REDACTED] and refunding the cash Delta had paid to Bombardier after Bombardier improperly [REDACTED]

82. In the Demand Letter, Delta further demanded that Bombardier assure Delta that it will [REDACTED]

[REDACTED]

83. For more than five weeks, Bombardier made no substantive response to the Demand Letter. Through legal counsel, Delta sent a second demand letter on March 13, 2020.

84. On March 17, 2020, Bombardier finally responded to the Demand Letter. In its response, Bombardier claimed that the [REDACTED]

[REDACTED] Bombardier denied any obligation [REDACTED] Bombardier also said that its March 17, 2020, letter did not include all of the reasons why Bombardier does not believe [REDACTED]

[REDACTED] Thus, Bombardier apparently believes that it has

other grounds for refusing [REDACTED] that it has refused to share with Delta, but which Bombardier may intend to raise in the future.

85. Bombardier's stated reasons [REDACTED]
[REDACTED]

[REDACTED] On information and belief, the real reasons for Bombardier's [REDACTED]
[REDACTED] is its precarious financial condition and related decision to exit the commercial aircraft business.

86. Regardless of its financial condition and recent asset sales, Bombardier remains [REDACTED] under the Purchase Agreement. Bombardier also indemnified Delta under the Assignment Agreement, and irrevocably and unconditionally guaranteed the performance of all obligations under the Purchase Agreement. Bombardier has breached the Purchase Agreement, Assignment Agreement and Guaranty by [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

87. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

COUNT ONE – BREACH OF THE PURCHASE AGREEMENT FOR REFUSAL TO

88. Delta adopts and incorporates by reference the allegations contained in Paragraphs 1-87 as if fully set forth herein.

89. The Purchase Agreement is a valid, legally enforceable contract. The Purchase Agreement is governed by New York law.

90. The Purchase Agreement is a contract for the sale of goods and is therefore governed by Article 2 of New York's Uniform Commercial Code.

91. Delta has performed its obligations under the Purchase Agreement.

92. Per [REDACTED] of the Purchase Agreement, Bombardier remains jointly and severally liable for the performance of all obligations under the Purchase Agreement. As an assignor, Bombardier also remains jointly and severally liable under the Purchase Agreement as a matter of New York statutory and common law.

93. The Purchase Agreement obligates Bombardier to [REDACTED]

94. [REDACTED]

[REDACTED] Bombardier's refusal is a breach of the Purchase Agreement.

95. Delta has been damaged by Bombardier's breach. D [REDACTED]

**COUNT TWO – BREACH OF THE PURCHASE AGREEMENT FOR FAILURE TO
PROVIDE WRITTEN ASSURANCE**

96. Delta adopts and incorporates by reference the allegations contained in Paragraphs 1-95 as if fully set forth herein

97. In 2019, Bombardier entered into an agreement to sell its regional jet program to Mitsubishi for approximately \$550 million. That sale, which is scheduled to close in 2020, qualifies as a sale of a material portion of Bombardier's assets.

98. Mitsubishi is in the business of manufacturing airframes.

99. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

100. Following Mitsubishi's acquisition of Bombardier's regional jet business, Mitsubishi, and not Bombardier, will be in the business of selling goods and services for CRJ-series aircraft originally manufactured by Bombardier.

101. [REDACTED], Bombardier did not require Mitsubishi to provide the written assurance referred to in paragraph 99 above. Delta has been damaged by Bombardier's breach in an amount to be proven at trial.

COUNT THREE – BREACH OF ASSIGNMENT AGREEMENT

102. Delta adopts and incorporates by reference the allegations contained in Paragraphs 1-101 as if fully set forth herein.

103. The Assignment Agreement is a valid and legally enforceable contract between Delta, Airbus Canada, and Bombardier.

104. Delta has performed its obligations under the Assignment Agreement.

105. The Assignment Agreement provides that Bombardier shall indemnify Delta from any and all claims, demands, causes of action, liabilities, judgments, losses, damages, costs, and

expenses of any kind whatsoever resulting from or arising out of any increase to or adverse change in the cost, risk, obligations, liabilities, or responsibility of Delta under the Purchase Agreement.

106. In the Assignment Agreement, Bombardier covenanted that its indemnification obligations would apply should there be any increase to or adverse change in the cost, risk, obligations, liability or responsibility of Delta under the Purchase Agreement.

107. [REDACTED]

[REDACTED] Through the Demand Letter, Delta demanded that Bombardier indemnify Delta for those increased costs, risks, and liabilities. Bombardier refused to do so. Bombardier's refusal is a breach of the Assignment Agreement.

108. Delta has been damaged by Bombardier's breach of the Assignment Agreement in an amount to be proven at trial.

COUNT FOUR – BREACH OF GUARANTY

109. Delta adopts and incorporates by reference the allegations contained in Paragraphs 1-108 as if fully set forth herein.

110. Bombardier and Delta are parties to the Guaranty. The Guaranty is a valid and legally enforceable contract.

111. Delta has performed its obligations under the Guaranty.

112. Through the Guaranty, Bombardier unconditionally and irrevocably guaranteed to Delta full and prompt payment on first demand of any amounts owed under the Purchase Agreement when those amounts are due and payable.

113. In the alternative to the Counts alleged above, [REDACTED]
[REDACTED]
[REDACTED]

114. Delta has been damaged by Bombardier's breaches of the Guaranty in an amount to be proven at trial.

COUNT FIVE – DECLARATORY JUDGMENT

115. Delta adopts and incorporates by reference the allegations contained in Paragraphs 1-114 as if fully set forth herein.

116. [REDACTED]

117. [REDACTED]

118. [REDACTED]

119. [REDACTED]

120. [REDACTED]

121.

[REDACTED]

122.

[REDACTED]

123.

[REDACTED]

124.

[REDACTED]

125. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

126. [REDACTED]

[REDACTED]

[REDACTED]

127. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

PRAYER FOR RELIEF

Delta respectfully requests:

- 1) A judgment awarding Delta damages for all damages it has incurred as a result of Bombardier's existing breaches of contract, which as of the date of this complaint [REDACTED] and which will grow as Bombardier continues to [REDACTED], together with prejudgment interest as allowed by law;

2) A declaratory judgment [REDACTED]

3) All further relief the Court deems just and proper.

Respectfully submitted this 14 day of April, 2020.

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